

Agreed Order 2006-11
John Brasher, D.V.M.

type of low grade sarcoma such as a low grade malignant peripheral nerve sheath tumor or fibrosarcoma.

The pathology report for "mass 2" indicated the following:

The submitted tissues contained extensive necrosis and hemorrhage that made the definitive diagnosis very difficult. While there is some possibility that these could be areas of granulation tissue formation, there were some areas that were very suspicious for a neoplasm such as a low grade malignant peripheral nerve sheath tumor. Proliferating spindle cells extended to the margins of both of the examined sections and the lesion could potentially recur locally. If this is a low grade malignant peripheral nerve sheath tumor, the potential for metastasis is extremely low.

3. On July 7th, the drain was removed and "Katie" was discharged from the clinic with prednisone and Vitamin E to treat suspected panniculitis (fat cell inflammation). According to Ms. O'Donnell, over the next few days she noticed that the dog's shoulder had begun to swell. She returned the dog to Dr. Brasher on July 16th and the sutures were removed. Dr. Brasher noted continued drainage from the site of the Penrose drain. According to Ms. O'Connell, Dr. Brasher told Ms. O'Connell that he needed to clean out the incision. Dr. Brasher suspected the drainage was the result of a foreign body. On July 21, 2004, Dr. Brasher re-explored the area and removed some necrotic fat and purulent material, and a Penrose drain was re-inserted. Dr. Brasher felt that the dog had a postoperative infection, antibiotics were started, and samples were taken for culture and sensitivity. The dog was hospitalized for several days, and Dr. Brasher noted that the dog's leg continued to deteriorate and she was in pain. According to Ms. O'Connell, "Katie's" condition did not improve, and the incision site had become an oozing sore. Ms. O'Connell claims that she suggested to Dr. Brasher that the dog may have contracted a staph infection. This is denied by Dr. Brasher. In any event, a culture was taken on July 24, 2004, which confirmed a staph infection. Treatment with Clavamox, to which staph is sensitive, had already been initiated.

4. On August 12th, Dr. Brasher re-explored the infected site, removed necrotic fat, and placed drains above and below the shoulder. On the morning of August 16th, the dog ran while being walked. The dog was eating well. Since the dog was doing better, Dr. Brasher believed that he was finally gaining control over what appeared to be an infection of the fatty tissue. Thereafter, on August 23rd, the dog and its condition did not improve, and "Katie" became non-weight bearing. Dr. Brasher indicated to Ms. O'Connell that he did not know why "Katie's" condition did not improve. At Ms. O'Connell's suggestion, Dr. Brasher radiographed the leg on August 26th, and discovered a chondrosarcoma/osteosarcoma of the scapula. Based on the dog's condition and a poor prognosis by Dr. Brasher, "Katie" was euthanized on August 27th.

5. After July 23, 2004, Dr. Brasher noted that the dog's leg was swollen and deteriorating, and

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she was in pain. In this situation, Dr. Brasher should have taken a radiograph earlier than August 26th, and a referral to a specialist was indicated at least after the second surgery. Dr. Brasher focused on the lipoma and infection but did not undertake additional diagnostics or consult with a specialist. In addition, the histopathology indicated a possible malignant tumor. Dr. Brasher's failure to change his treatment protocols in light of the dog's condition and the histopathology does not represent the same degree of humane care, skill, and diligence in treating patients as is ordinarily used in the same or similar circumstances by average members of the veterinary medical profession in good standing in Houston, Texas, or similar communities.

Conclusions of Law

1. Respondent is required to comply with the provisions of the Veterinary Licensing Act, Chapter 801, Texas Occupations Code, and with the Board's Rules.

2. Based on Findings of Fact 2 through 5, Respondent has violated Rule 573.22, PROFESSIONAL STANDARD OF HUMANE TREATMENT, of the Board's Rules of Professional Conduct, which requires veterinarians to exercise the same degree of humane care, skill and diligence in treating patients as is ordinarily used in the same or similar circumstances by average members of the veterinary medical profession in good standing in the locality or community in which they practice, or in similar communities.

3. Based on Findings of Fact 2 through 5 and Conclusion of Law 2, Respondent has violated Section 801.402 (6) of the Veterinary Licensing Act, Texas Occupations Code, and is subject to disciplinary action by the Board:

801.402. GENERAL GROUNDS FOR LICENSE DENIAL OR DISCIPLINARY ACTION. A person is subject to denial of a license or to disciplinary action under Section 801.401 if the person:

(6) engages in practices or conduct that violates the board's rules of professional conduct.

4. Based on Conclusions of Law 1 through 3, Respondent is subject to disciplinary action under Section 801.401 of the Veterinary Licensing Act, Texas Occupations Code:

801.401. DISCIPLINARY POWERS OF BOARD. (a) If an applicant or license holder is subject to denial of a license or to disciplinary action under Section 801.402, the Board may:

- (1) refuse to examine an applicant or to issue or renew a license
- (2) revoke or suspend a license;
- (3) place on probation a license holder or person whose license has been suspended;
- (4) reprimand a license holder; or
- (5) impose a civil penalty.

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NOW, THEREFORE, THE BOARD AND RESPONDENT AGREE AS FOLLOWS:

Based on the above Findings of Fact and Conclusions of Law, the Board ORDERS that JOHN BRASHER, D.V.M., be INFORMALLY REPRIMANDED.

The Board further ORDERS that:

- 1 Respondent shall abide by the Rules of Professional Conduct, the Texas Veterinary Licensing Act, and the laws of the State of Texas and the United States.
2. Respondent shall cooperate with the Board's attorneys, investigators, compliance officers and other employees and agents investigating Respondent's compliance with this Order.
3. Failure by Respondent to comply with the terms of this Agreed Order or with any other provisions of the Licensing Act or the Board Rules, may result in further disciplinary action.

Respondent, by signing this Agreed Order, acknowledges his understanding of the Agreed Order, the notice, and Findings of Fact and Conclusions of Law herein set forth herein, and agrees that he will satisfactorily comply with the mandates of the Agreed Order in a timely manner or be subject to appropriate disciplinary action by the Board.

Respondent, by signing this Agreed Order, waives his right to a formal hearing and any right to seek judicial review of this Agreed Order. Respondent acknowledges that he is represented by legal counsel in this matter.

RESPONDENT WAIVES ANY FURTHER HEARINGS OR APPEALS TO THE BOARD OR TO ANY COURT IN REGARD TO ALL TERMS AND CONDITIONS OF THIS AGREED ORDER. NOTHING IN THIS ORDER SHALL BE DEEMED A WAIVER OF RESPONDENT'S RIGHTS UNDER STATUTE OR UNDER THE UNITED STATES OR TEXAS CONSTITUTIONS TO APPEAL AN ORDER OR ACTION OF THE BOARD SUBSEQUENT TO THIS AGREED ORDER EXCEPT AS RESPONDENT MAY HAVE OTHERWISE AGREED TO HEREIN. RESPONDENT AGREES THAT THIS IS A FINAL ORDER.

The effective date of this Agreed Order shall be the date it is adopted by the Board.

I, **JOHN BRASHER**, D.V.M., HAVE READ AND UNDERSTAND THE FOREGOING AGREED ORDER. I UNDERSTAND BY SIGNING IT, I WAIVE CERTAIN RIGHTS. I SIGN IT VOLUNTARILY. I UNDERSTAND THAT THIS ORDER CONTAINS THE ENTIRE AGREEMENT AND THERE IS NO OTHER AGREEMENT OF ANY KIND,

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VERBAL, WRITTEN OR OTHERWISE.

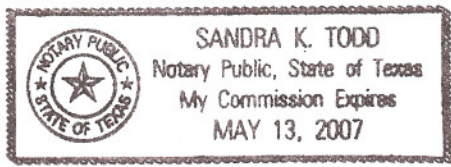
John Brasher, D.V.M.
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1/26/06
Date

STATE OF TEXAS §
COUNTY OF Harris §

BEFORE ME, on this day, personally appeared JOHN BRASHER, D.V.M., known to me as the person whose name is subscribed to the foregoing document, and acknowledged to me that he executed the same for the purposes stated therein.

Given under the hand and seal of office this 26 day of JAN, 2006



Sandra K. Todd
Notary Public

SIGNED AND ENTERED by the TEXAS STATE BOARD OF VETERINARY MEDICAL EXAMINERS on this the 16th day of February, 2006.

Robert L. Lastovica, D.V.M., President
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